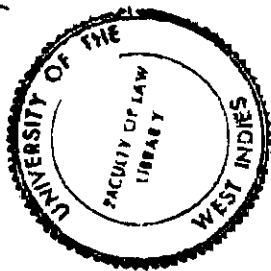


APPENDIX



GUYANA

ACT NO. 12 of 1983

CHILDREN BORN OUT OF WEDLOCK (REMOVAL OF DISCRIMINATION) ACT 1983

I assent.

L. F. S. BURNHAM,
President.

1983—05—18.

ARRANGEMENT OF SECTIONS

SECTION

1. Short title.
2. Amendment of certain enactments.
3. Repeal of the Bastardy Act and savings.

SCHEDULE

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AN ACT to amend certain enactments and to repeal the Bastardy Act.

Enacted by the Parliament of Guyana: —

- Amendment of certain enactments.

1. This Act may be cited as the Children Born Out of Wedlock (Removal of Discrimination) Act 1983.
- Repeal of the Bastardy Act and savings. Cap. 45:02

2. The enactments specified in the first column of the Schedule are hereby amended in the manner specified in the corresponding entry in the second column of that Schedule.
- (1) —

3. (1) The Bastardy Act (hereafter in this section referred to as the "said Act") is hereby repealed.

(2) Notwithstanding the repeal of the said Act by subsection (1) —

- (a) any complaint made under section 3 or application made under section 9 of the said Act and pending on the day immediately preceding the commencement of this Act may be continued to its final determination under the provisions of the said Act as if the said Act had not been repealed; and
- (i) the relevant provisions of the said Act shall apply to, and in relation to, the complaint or the application, as the case may be, and all matters arising therefrom as if the said Act had not been repealed; and

- (ii) the provisions of paragraph (b) shall apply to any order made under the said Act in respect of any matter which is the subject of the complaint or the application, as the case may be, or any appointment made under the said Act for any purpose relating to any such matter, including an order under section 4 or 10 or an appointment under section 6 (3) of the said Act, in the same manner as that paragraph would apply to, and in relation to, any such order or appointment if it were in force on the day immediately preceding the commencement of this Act;

- (b) any affiliation order made under section 4 of the said Act in respect of a child, any order made under section

6 (3) of the said Act appointing a person to have the custody of a child or any order made under section 10 of the said Act directing payment of any sum to the poor law commissioners or a district commissioner in respect of a child chargeable to the poor law commissioners or any other order or appointment made under the said Act, and in force on the day immediately preceding the commencement of this Act, shall continue to be in force until it would have ceased to be in force under the provisions of the said Act, and the relevant provisions of the said Act shall apply to, and in relation to, such order and the enforcement thereof or any such appointment and, in the case of an affiliation order or an order under section 10 of the said Act, the amounts payable under the order as if the said Act had not been repealed;

Provided that —

- (i) the affiliation order made under section 4 of the said Act in respect of the child shall not, if in respect of the child an order of maintenance is made under the Maintenance Act, be enforced **Cap. 45:02** in respect of the period for which the second mentioned order is enforceable;
- (ii) an order made under section 6 (3) of the said Act appointing a person to have the custody of a child shall, if an order is made under section 15 of the Infancy Act regarding the custody **Cap. 45:01** of the child, cease to be in force with effect from the day immediately preceding the date on which the second mentioned order is made.

Section 2		SCHEDULE	
Enactments		Amendments	
Evidence Act, Cap. 5:03			
Section 61 (2)		(1) Substitute "child born out of wedlock" for "bastard child" where they occur for the first time.	
		(2) Substitute "child" for "bastard child" where they occur for the second time.	

Enactments	Amendments
<div>Civil Law of Guyana Act, Cap. 6:01</div> <div>Section 5</div>	<div>Insert after subsection (6) the following subsection as subsection (7) —</div> <div>(7) In determining relationships for the purposes of this section no regard shall be had to whether any person is born in wedlock or out of wedlock and a person born out of wedlock shall be entitled to the same rights under this section as a person born in wedlock.</div> <div>Provided that a man shall not, as the father of a child born out of wedlock and dying intestate, be entitled to take any interest under this section in the estate of the child unless, before the death of the child, —</div> <div>(i) he had been adjudged to be the father of the child by a court of competent jurisdiction; or</div> <div>(ii) he had acknowledged the child to be his own and had contributed towards the maintenance of the child."</div>
<div>Maintenance Act, Cap. 45:03</div> <div>Section 2</div>	<div>(1) In paragraph (a) after "children" insert "whether born in wedlock or not".</div> <div>(2) In paragraph (c) after "child" insert "whether born in wedlock or not".</div> <div>(3) For paragraph (d) substitute the following —</div> <div>"(d) the children, whether born in wedlock or not, —</div> <div>(i) of any child that his wife has by him during his marriage to her;</div> <div>(ii) of any child of which he has been duly adjudged to be the father under any law for the time being in force; or</div> <div>(iii) of any child which is acknowledged by him to be his own,</div> <div>in the event of the parents of those children failing to maintain them, until they attain the age of sixteen years, or longer if they are, by reason of bodily or mental infirmity, unable to maintain themselves."</div>
<div>Section 4</div>	<div>(1) Insert "or her" after "with whom his".</div>
<div>Section 6, Proviso</div> <div>Section 13</div> <div>Infancy Act, Cap. 46:01</div> <div>Section 1A</div>	<div>Insert after section 1 the following section as section 1A —</div> <div>1A. In this Act —</div> <div>(a) "infant" means any person who is a minor, whether born in wedlock or out of wedlock;</div> <div>(b) "father", in relation to an infant who is born out of wedlock, means —</div> <div>(i) the man who has been adjudged to be the father of the infant by a court of competent jurisdiction; or</div> <div>(ii) if there is no such man, the man who has acknowledged the infant to be his child, and has contributed towards the maintenance of the infant, before he exercises or seeks to exercise in respect of the infant any rights or functions conferred on the father of an infant by any provision of this Act.</div> <div>and the expression "parent", in so far as it refers to the father of such infant, shall be construed accordingly."</div> <div>Delete "(by which term minors are held to be meant and included)".</div>

Enactments

Section 7

- (1) Insert "or she" after "if he".
- (2) Delete "if a male and if she has attained the full age of twelve years if a female".

Section 10A

Insert after section 10 the following section as section 10A —

"Guardian. 10A. (1) Both the father and the mother of an infant shall be the guardians, and shall be entitled to the custody, of the infant.

(2) The father or mother of an infant, or both of them, may be deprived by the Court of the guardianship or custody of the infant or both under the provisions of this Act."

Section 12

Substitute the following —

"On death of one of the parents, the other parent shall continue to be guardian of the infant alone or jointly with others."

12. (1) Subject to subsection (2), on the death of one of the parents of an infant, the surviving parent shall continue to be the guardian of the infant, —

- (a) where any guardian has been appointed by the parent who died, jointly with that guardian; or
- (b) where no guardian has been appointed by the parent who died, alone.

(2) Where one of the parents of an infant has died, and —

- (a) no person has been appointed by him to be the guardian of the infant; or
- (b) if the person or all the persons appointed by him to be the guardian or guardians of the infant is or are dead, or refuses or refuse to act,

the Court, if it thinks fit, may appoint any person or persons to be the guardian or guardians of the infant to act jointly with the surviving parent."

Amendments

Enactments

Section 13

- (1) Substitute for the marginal note the following —
"Parent's power of appointment of guardian in certain cases."

- (2) Substitute for subsection (1) the following subsections —
"(1) Any one of the parents of an infant may by will, deed, or document notarially executed appoint any fit person or persons to be guardian or guardians of the infant, after the death of that parent, jointly with the surviving parent.
(1A) Both parents, acting jointly or separately, or any one of the parents, of an infant may by will, deed, or document notarially executed appoint any fit person or persons to be guardian or guardians of the infant after the death of both parents.
(1B) Where there are more than one person appointed under subsection (1A) to be guardians of an infant, the guardians so appointed shall act jointly."

Section 14

Delete.

Section 15

Substitute the following —

"Court may make order as to custody."

15. Where the parents are living apart the Court may, upon the application of a parent with whom the infant is not residing, make any order it thinks fit regarding the custody of the infant and the right of access to the infant of either parent, having regard to the welfare of the infant and the conduct of the parents, and to the wishes as well of the father as of the mother, and may alter, vary or discharge the order on the application of either parent or, after the death of either parent, any guardian under this Act, and in every case may make any order respecting the costs of either parent and the liability of the other parent therefor, or otherwise as to costs, it thinks just."

Section 19

Delete.

Section 20

Substitute "the custody or control of the infant shall be left exclusively to one parent" for "the father of the infant shall give up the custody or control of the infant to the mother".

Enactments

Amendments

Legitimacy Act,
Cap. 46:02General
amendment

Section 11

Substitute "person born out of wedlock" for "illegitimate person" wherever they occur.

(1) In subsection (1) —

- (a) insert "and before the commencement of the Children Born Out of Wedlock (Removal of Discrimination) Act 1983" after "this Act";
- (b) substitute "a child born out of wedlock" for "an illegitimate child";
- (c) substitute "the child born out of wedlock" for "the illegitimate child".

(2) In subsection (2) —

- (a) insert "and before the commencement of the Children Born Out of Wedlock (Removal of Discrimination) Act 1983" after "this Act";
- (b) substitute "a child born out of wedlock" for "an illegitimate child";
- (c) substitute "children, whether born in wedlock or out of wedlock," for "legitimate and illegitimate children".

Passed by the National Assembly on 1983-05-13.

(Bill No. 12/1983)

F. A. Narain,
Clerk of the National Assembly.



THE LAWS OF GUYANA

REVISED EDITION

Prepared under the Authority of
THE LAW REVISION ACT (Cap. 2:02)

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LAWS OF GUYANA

**INFANCY ACT
CHAPTER 46:01**

**Act
19 of 1916
Amended by
28 of 1923
O. 4/1974**

Current Authorised Pages

<i>Pages (inclusive)</i>		<i>Authorised by L.R.O.</i>
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<i>7-8</i>	<i>...</i>	<i>1/1973</i>

L.R.O. 1/1975

Note

on

Subsidiary Legislation

This Chapter contains no subsidiary legislation.

Note

on

Revision Date

This Act has been revised up to 30th June, 1974—instead of 1st January, 1974.

CHAPTER 46:01

INFANCY ACT

ARRANGEMENTS OF SECTIONS

SECTION

1. Short title.
2. Contracts by infants, except for necessities, to be void.
3. No action to be brought on ratification of infant's contract.
4. Soliciting infant to make affidavit in connection with loan.
5. Avoiding contract for payment of loan advanced during infancy.
6. Infant executors and administrators.
7. Wills of infants.
8. Marriage settlements with the sanction of the Court.
9. Marriage to render infant of full age.
10. Parent under 18 may appoint guardian.
11. (1) Guardian's custody and management of infant's property during infancy.
(2) Application of income of property of infants for purposes of education or otherwise.
12. On death of father, mother to be guardian alone or jointly with others.
13. Mother may appoint guardian in certain cases.
14. Illegitimate children.
15. Court may make orders as to custody.
16. Removal of guardian.
17. Guardianship in case of divorce or judicial separation.
18. Application to Court.
19. Court may order that mother may have access to, and custody of, infant under sixteen years.
20. In case of separation deed between father and mother.
21. Court to retain upper guardianship.

1929 Ed.
c. 141
1953 Ed.
c. 39

An Act to introduce special provisions relating to the Contracts, Wills and Guardianship of Infants. 19 of 1916

[28TH OCTOBER, 1916]

1. This Act may be cited as the Infancy Act.

Short title.

2. All contracts henceforth entered into by infants (by which term minors are held to be meant and included) for the repayment of money lent or to be lent, or for goods supplied or to be supplied (other than contracts for necessities), and all accounts stated with infants, shall be absolutely void:

Contracts by infants, except for necessities, to be void.

L.R.O. 1/1975

Provided that this enactment shall not invalidate any contract into which an infant, by any existing or future statute or by the rules of common law or equity, may enter except those now voidable by law.

No action to be brought on ratification of infant's contract.

3. No action shall be brought whereby to charge anyone upon any promise made after full age to pay a debt contracted during infancy, or upon any ratification made after full age of a promise or contract made during infancy, whether there is or is not any new consideration for that promise or ratification after full age.

Soliciting infant to make affidavit in connection with loan.

4. If anyone, except under the authority of the High Court (hereinafter referred to as the Court) solicits an infant to make an affidavit or statutory declaration for the purpose of or in connection with any loan, he shall be liable on summary conviction to a fine of three hundred dollars and to imprisonment for one month, and if convicted on indictment to a fine of fifteen hundred dollars or to imprisonment for three months.

Avoiding contract for payment of loan advanced during infancy.

5. (1) If an infant who has contracted a loan which is void in law agrees after he comes of age to pay any money which in whole or in part represents, or is agreed to be paid in respect of, that loan and is not a new advance, that agreement and any instrument, negotiable or other, given in pursuance thereof or for carrying it into effect, or otherwise in relation to the payment of money representing or in respect of the loan, so far as it relates to money which represents or is payable in respect of the loan and is not a new advance, shall be void absolutely as against all persons whomsoever.

(2) For the purposes of this section any interest, commission, or other payment, in respect of the loan shall be deemed to be a part of the loan.

Infant executors and administrators.
[O. 4/1974]
c. 12:01

6. (1) An infant may be appointed executor but cannot exercise the office until he has attained the full age of eighteen years.

(2) Letters of administration under the Deceased Persons Estates Administration Act shall not be granted to anyone before he has reached the age of eighteen years, but if an infant is named as sole executor by a will, letters of administration *durante minore aetate* may be granted to his guardian or to any other person the Registrar of Deeds or the Court deems fit.

Wills of infants.

7. An infant can make a will without the consent of parent or guardian if he has attained the full age of fourteen years if a male and if she has attained the full age of twelve years if a female, but subject as aforesaid an infant cannot make a will.

8. (1) An infant above the age of seventeen years may, with the sanction of the Court, upon or in contemplation of marriage make a valid and binding settlement or contract for a settlement of all or any property movable or immovable, real or personal, whether in possession, reversion, remainder, or expectancy, to or over which he or she is entitled or has any power of appointment, not being a power expressly declared to be incapable of being exercised during infancy; and all transports or conveyances, mortgages, appointments of property, and contracts to make a conveyance, or transport, mortgage, or appointment, executed by the infant with the approbation of the Court in order to give effect to the settlement shall be as valid as if the infant were of full age.

Marriage settlements with the sanction of the Court.

(2) The Court may sanction the settlement or contract upon petition, presented by the infant or his or her guardian, in a summary way without the institution of a suit, and, if there is no guardian, may or may not require a guardian to be appointed, and also may if it thinks fit require any persons interested or appearing to be interested to be served with notice of the petition.

9. An infant whether male or female shall be deemed by the mere fact of marriage to have attained full age, but the Court by order, made upon petition by the infant or his or her guardian, or by the Public Trustee, in a summary way without the institution of a suit, may give any directions it sees fit for the protection of the property of the parties until they have attained the age of eighteen.

Marriage to render infant of full age.
[O. 4/1974]

10. Subject to the other provisions of this Act, a parent under eighteen years whether male or female may, by will, deed, or document notarially executed, appoint as from the date of his or her death a guardian or guardians to any child or children who is or are unmarried at the date of his or her death.

Parent under 18 may appoint guardian.
[O. 4/1974]

11. (1) Any guardian or guardians may assume the custody to the use of any infant of the profits of all his immovable property, and also the custody, tuition, and management of his movable property, until he reaches the age of eighteen years or until his marriage, and bring any action or actions in relation thereto and may take or grant leases on his behalf.

Guardian's custody and management of infant's property during infancy.
[O. 4/1974]

(2) Where any property is held by a guardian, trustee, administrator, or executor, in trust for an infant (whether the trust is express, implied, or constructive), either for life or for any greater interest, and whether absolutely or contingently on the infant attaining the age of eighteen years, or on the occurrence of any event before the infant's attaining that age, the guardian, trustee,

Application of income of property of infants for purposes of education or otherwise.
[O. 4/1974]

administrator, or executor, may at his sole discretion pay to the infant's parent or guardian (if any) or otherwise apply for or towards the infant's maintenance, education, or benefit, the income of that property or any part thereof, whether there is or is not any other fund applicable to the same purpose, or anyone bound by law to provide for the infant's maintenance or education.

(3) The guardian, trustee, administrator or executor aforesaid shall accumulate all the residue of that income in the way of compound interest by investing it and the resulting income thereof from time to time on securities on which he is by the settlement (if any) or by law authorised to invest trust money, and shall hold those accumulations for the benefit of the person who ultimately becomes entitled to the property from which they arise; but so that the guardian, trustee, administrator, or executor may at any time, if he thinks fit, apply those accumulations or any part thereof, as if they were income arising in the then current year.

(4) This section applies—

(a) only if and as far as a contrary intention is not expressed in the instrument (if any), under which the interest of the infant arises, and shall have effect subject to the terms of that instrument and to the provisions therein contained; and

(b) whether the guardian, trustee, administrator, or executor acquired that capacity before or after the commencement of this Act.

On death of father, mother to be guardian alone or jointly with others

12. (1) On the death of the father of an infant, and if he has died prior to the commencement of this Act then from and after the commencement, the mother, if surviving, shall be the guardian of the infant, either alone when no guardian has been appointed by the father, or jointly with any guardian appointed by him.

(2) When no guardian has been appointed by the father, or if the guardian or guardians appointed by him is or are dead, or refuses or refuse to act, the Court, if it thinks fit, may from time to time appoint a guardian or guardians to act jointly with the mother.

Mother may appoint guardian in certain cases.

13. (1) The mother of an infant may by will, deed, or document notarially executed—

(a) appoint any person or persons to be guardian or guardians of the infant after the death of herself and the father of the infant (if the infant is then unmarried), the guardians when appointed by both parents acting jointly;

(b) provisionally nominate some fit person or persons to act as guardian or guardians of the infant after her death jointly with the father of the infant, and the Court, after her death, if it be shown to its satisfaction that the father is for any reason unfitted to be the sole guardian of his children, may

confirm the appointment of the guardian or guardians, who shall thereupon be authorised and empowered so to act as aforesaid, or may make any other order in respect of the guardianship the Court thinks right.

(2) If guardians are unable to agree upon a question affecting the welfare of an infant, any of them may apply to the Court for its direction, and the Court may make any order or orders regarding the matters in difference it thinks proper.

14. The mother of an illegitimate infant shall be the guardian of that infant and shall be entitled to its custody but may be deprived by the Court of the guardianship or custody as in section 16 provided.

Illegitimate children.

15. The Court, upon the application of the mother of an infant, may make any order it thinks fit regarding the custody of the infant and the right of access to the infant of either parent, having regard to the welfare of the infant and the conduct of the parents, and to the wishes as well of the mother as of the father, and may alter, vary, or discharge the order on the application of either parent or, after the death of either parent, any guardian under this Act, and in every case may make any order respecting the costs of the mother and the liability of the father therefor, or otherwise as to costs, it thinks just.

Court may make orders as to custody.

16. The Court, on being satisfied that it is for the welfare of the infant, may remove from his office any testamentary guardian or any guardian appointed or acting by virtue of this Act, and the Court, if it deems it to be for the welfare of the infant, may also appoint another guardian in place of the guardian so removed.

Removal of guardian.

17. Wherever a decree for judicial separation, or a decree either *nisi* or absolute for divorce, is pronounced, the Court pronouncing the decree may thereby declare the parent by reason of whose misconduct the decree is made to be a person unfit to have the custody of the children (if any) of the marriage; and in that case the parent so declared to be unfit, upon the death of the other parent, shall not be entitled as of right to the custody or guardianship of the children.

Guardianship in case of divorce or judicial separation.

18. Applications under this Act may be made to the Court in the manner prescribed by rules of court.

Application to Court.

19. The Court upon hearing the petition of the mother of any infant under sixteen years of age, may order that the petitioner shall have access to the infant at the times and subject to the regulations the Court deems proper, or to order that the infant shall be delivered to the mother and remain in or under her custody or control, or if already in her custody or under her control remain therein, until

Court may order that mother may have access to, and custody of infant under 16 years.

the infant attains the age, not exceeding sixteen, directed by the Court; and further, may order that the custody or control shall be subject to any regulations regarding access by the father or guardian of the infant and otherwise the Court deems proper.

In case of
separation
deed between
father and
mother.

20. No agreement contained in any separation deed made between the father and mother of any infant shall be held to be invalid by reason only of its providing that the father of the infant shall give up the custody or control of the infant to the mother:

Provided that the Court shall not enforce that agreement if the Court is of opinion that it will not be for the infant's benefit to give effect thereto.

Court to
retain upper
guardianship.

21. The Court may exercise in the matter of an infant any power which the Supreme Court of British Guiana has hitherto exercised as upper guardian of minors under the Roman-Dutch law practice or procedure, and may further exercise any power now or at any time hereafter exercised in those matters by the Chancery Division of the High Court of Justice in England in accordance with any practice or procedure of that Court.
